



POLICE DEPARTMENT

January 5, 2021

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	
Detective Kristen Swinkunas	:	2019-20715
Tax Registry No. 939547	:	
26 Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Gulnora Tali, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Frances Impellizzeri, Esq.
120 Broadway
New York, NY 10271

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Detective Kristen Swinkunas, while assigned to the Special Victims Division, while on and off-duty, on or about and between July 10, 2017, and October 15, 2018, improperly utilized a Department computer to access a database on one hundred eleven (111) occasions for non-Departmental purposes.

P.G. 219-14, Page 1, Paragraph 2

DEPARTMENT COMPUTER
SYSTEMS

2. Said Detective Kristen Swinkunas, while assigned to the Special Victims Division, while on and off-duty, on or about and between July 10, 2017, and October 15, 2018, did fail and neglect to safeguard her Department computer code.

P.G. 219-14, Page 1, Paragraph 4

DEPARTMENT COMPUTER
SYSTEMS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 30, 2020. Respondent, through her counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having carefully reviewed all of the evidence in this matter, I recommend that Respondent forfeit fifteen (15) vacation days.

SUMMARY OF EVIDENCE IN MITIGATION

This matter arose out of a family dispute between Respondent and her ex-husband, a fellow NYPD detective, from whom she was divorced in October of 2015. They have a son in common, who was born in [REDACTED]. There was an ongoing custody dispute between the parents, which involved the court system from 2017 until March of 2019, when Respondent was awarded full custody and her ex-husband granted only visitation rights. Prior to that order, there had been a joint custody agreement, whereby the child resided with Respondent, but was with her ex-husband every other weekend.

Respondent testified that the custody order provided that at the conclusion of each weekend visitation period, Respondent would pick up her son from her ex-husband's [REDACTED] home. The order required that her ex-husband provide 90-day notice if he were to change his residence. According to Respondent, beginning in July of 2017 she became suspicious that her ex-husband was no longer residing in [REDACTED] and was instead living in [REDACTED] with his fiancée, who later became his wife. Respondent recounted specific examples of how her ex-husband was late for drop-offs and often changed the drop-off locations with little or no notice, and how he provided contradictory explanations for these changes. Additionally, on two occasions in 2017, her ex-husband's fiancée picked up the child, and on other occasions his sister did the pick-up. Respondent was concerned that she was not receiving accurate information as to where her ex-husband was taking their son, who [REDACTED]

[REDACTED] She reported her concerns to her family court attorney, who filed a court petition, but the case dragged on in court until 2019. (Tr. 24-26, 32-39, 41-46, 54, 62-66, 69, 74, 87-89)

In an effort to obtain information and evidence as to her ex-husband's whereabouts, Respondent began conducting computer searches of her ex-husband beginning in July of 2017. Respondent testified that over a period of 16 months, she conducted more than 100 license plate searches using the Department's Domain Awareness System. She also ran the plates of her ex-husband's fiancée and sister on several occasions, in part because she was seeking to serve the fiancée with court papers. According to Respondent, the computer checks confirmed that her son was being driven to [REDACTED] (Tr. 21, 39-40, 43, 74)

Additionally, in July of 2017, Respondent consulted with a former co-worker at the 32 Precinct regarding the possibility that her ex-husband was wrongfully residing out-of-state.

Respondent provided her computer codes to the co-worker so that she could make computer checks and help gather information as to the ex-husband's whereabouts. When Respondent admitted to her misuse of the codes during her official Department interview in May of 2019 (Dept. Ex. 2), the Department revoked Respondent's code access until February of 2020. (Tr. 47-51, 85-86)

Respondent admitted that she was wrong to use the Department's computer system for non-departmental purposes, stating that she has been on the job long enough to know the rules prohibiting such conduct. She explained, however, that she is "always going to be a mom," and was honestly worried about the safety of her child. Respondent insisted that she has not misused the Department's computer database since the timeframe of this matter. (Tr. 52-53, 91)

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 11, 2005. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no disciplinary record. She has been awarded five medals for Excellent Police Duty, and one Commendation.

The Department Advocate recommends that Respondent forfeit twenty (20) vacation days, arguing that Respondent allowed issues in her personal life to adversely affect her professional career: specifically, Respondent repeatedly and wrongfully used the Department's computer system to uncover information that was used as ammunition in her custody battle. Counsel for Respondent counters that a penalty of five (5) vacation days is appropriate, since

Respondent acted out of concern for her young son, who has health issues, and Respondent has readily acknowledged the mistakes she made.

The baseline penalty for misuse of the Department's computer database is the forfeiture of ten (10) vacation days. See, e.g., *Disciplinary Case No. 2018-19626* (Nov. 27, 2019) (Fourteen-year sergeant with no disciplinary record negotiated a penalty of 10 vacation days for conducting computer inquiries in Department databases unrelated to official business on 11 occasions). However, where the number of improper database searches is significantly more extensive, the level of misconduct is greater and an upward departure of five (5) additional vacation days may be warranted. See, e.g., *Disciplinary Case No. 2019-20837* (Sept. 21, 2020) (Eight-year police officer with no disciplinary record forfeited 15 vacation days for utilizing Department databases to conduct 100 inquiries on the male friend of his estranged wife as well as the three vehicles registered in his name).

On the one hand, Respondent appeared genuine in her concern for the welfare of her son, as her custody dispute with her ex-husband worked its way through the court system. However, as she, herself, acknowledged, her misuse of the Department's databases to support her custody proceeding was an inappropriate way to deal with the matter. For a period spanning *16 months*, Respondent conducted approximately *107 searches* of her ex-husband. Additionally, she conducted searches related to her ex-husband's fiancée. Further, Respondent recruited another MOS to assist in her wrongdoing, improperly sharing her Department computer code for the purpose of conducting additional searches.

As such, although the 20 days recommended by the Department Advocate is excessive, under these circumstances an upward departure from the baseline penalty of 10 days is

warranted. Based on the totality of the facts and issues in this matter, I recommend that Respondent forfeit fifteen (15) vacation days.

Respectfully submitted,

Jeff S. Adler

Jeff S. Adler

Assistant Deputy Commissioner Trials

APPROVED
MAR 12/2021
[Signature]
DEPUTY CHIEF
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE KRISTEN SWINKUNAS
TAX REGISTRY NO. 939547
DISCIPLINARY CASE NO. 2019-20715

Respondent was appointed to the Department on July 11, 2005. On her last three performance evaluations, she twice received 4.0 overall ratings of “Highly Competent” in 2017 and 2019, and once received a 4.5 rating of “Extremely Competent/Highly Competent” in 2018. She has been awarded five medals for Excellent Police Duty and one Commendation.

[REDACTED]

Respondent has no disciplinary record.

For your consideration.

Jeff S. Adler

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Assistant Deputy Commissioner Trials